

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Nursing

Regulation/Package Title: Five-year review of administrative rules and continuing education along with technical changes

Rule Number(s): 4723-1-01 through 4723-1-11; 4723-3-01 and 4723-3-02; 4723-14-01 through 4723-14-18; 4723-5-08, 4723-5-21 and 4723-5-23; and 4723-27-01 and 4723-27-08.

Date: September 10, 2012

Rule Type:

☐ Amended

☐ 5-Year Review

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 4723-1, OAC, Board organization and records, includes Rules 1-01 to 1-06, that address elections of officers and the supervising member for disciplinary matters, board meetings, the executive director, board records and fee payments related to licensure, and adoption of rules in compliance with Chapter 119. It includes Rules 1-07 to 1-11 related to “Personal Information Systems,” a section of rules that were adopted/amended in 2010 as required by HB 648 (Ohio Revised Code Section 1347. et seq). The rules in Chapter 4723-3, OAC, include definition of terms used in Chapter 4723., OAC. Chapter 4723-14, OAC, contains continuing education rules. The Nurse Practice Act requires licensees to complete continuing education as part of their biennial renewal process to maintain their knowledge and skills for safe nursing practice. There are technical revisions in Chapters 4723-5 and 4723-27, OAC, to update language or correct typographical errors.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code (ORC) Section 4723.07 is the statutory authority for rules 4723-1-01 through 4723-1-11; 4723-3-01 and 4723-3-02; 4723-14-01 through 4723-14-18; 4723-5-08, 4723-5-21 and 4723-5-23; and 4723-27-01 and 4723-27-08, OAC.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

The answer is no to both questions for rules 4723-1-01 through 4723-1-11; 4723-3-01 and 4723-3-02; 4723-14-01 through 4723-14-18; 4723-5-08, 4723-5-21 and 4723-5-23; and 4723-27-01 and 4723-27-08, OAC.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable to this rule package: 4723-1-01 through 4723-1-11; 4723-3-01 and 4723-3-02; 4723-14-01 through 4723-14-18; 4723-5-08, 4723-5-21 and 4723-5-23; and 4723-27-01 and 4723-27-08, OAC.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The public purpose for the regulation in Chapter 4723-1, OAC, is to establish requirements for Board organization and administration.

The public purpose for the regulation in Chapter 4723-3, OAC, is to provide definitions for the terminology used throughout the rules.

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The public purpose for the regulation in Chapter 4723-14, OAC, is to establish continuing education for nursing practice, a critical tool in ensuring that licensees remain up-to-date with practice in order to provide safe nursing care.

The public purpose for the regulation in Chapter 4723-5, OAC, is to establish minimum standards for pre-licensure nursing education programs to ensure future nurses are educated to provide safe patient care. Technical changes and typographical errors are corrected in this Chapter.

The public purpose for the regulation in Chapter 4723-27, OAC, is to establish requirements for safe medication administration by certified medication aides. Technical changes and a typographical error are corrected in this Chapter.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success will be measured by having clear rules written in plain language, by licensee compliance with the rules, and minimal questions from licensees and the public regarding the requirements of the rules. For the Chapter 4723-14, OAC, continuing education, success may also be measured by regularly discussing any issues with the rules with the Board's Advisory Group on Continuing Education.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On May 7, 2012, the Board provided interested parties, including the Ohio Nurses Association, the Ohio Association of Advanced Practice Nurses, the Council for Ohio Health Care Advocacy, and representatives of Ohio healthcare systems and education programs, with draft rule language, and requested comments.

On June 27, 2012, the Board held an interested party meeting to review the proposed rules. Representatives from the Ohio Association of Advanced Practice Nurses, the Ohio Nurses Association, and the Council for Ohio Health Care Advocacy reviewed and commented on the rules.

Another group of stakeholders involved in the development of the rules was the Board's Advisory Group on Continuing Education. The Advisory Group is composed of continuing education approvers, four continuing education providers, and one member actively involved with a national accreditation system for nursing continuing education. The Advisory Group reviewed the continuing education rules regularly over the course of the last three years to aid the Board in the five-year rule review and the development of any needed changes. The Advisory Group met on the following meeting dates to discuss the Chapter 4723-14, OAC: June 12, 2009;

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October 9, 2009; February 19, 2010; June 18, 2010; October 15, 2010; February 18, 2011; June 3, 2011; October 7, 2011; February 10, 2012; and June 15, 2012.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Chapter 4723-14 Continuing Education

The Advisory Group on Continuing Education provided recommended language to Chapter 4723-14, OAC, as described below. The Board agreed with the Advisory Group's recommendations.

Rule 4723-14-01:

In new Paragraphs (A), (B), (D) and (E), the Advisory Group recommended changes to distinguish between "accredited provider" and "approved provider unit"; and to add definitions for a "commercial interest entity" (based on a definition used by the American Nurses Credentialing Center), and "commercial support", associated with a for-profit business, as distinguished from "sponsorship support", which is given by a non-commercial entity.

In new paragraph (C), changes were recommended involving the use of the term "Category A". Traditionally, "category A" has referred to continuing education in Ohio law and rules. This label occurred because originally, the rule listed multiple types of continuing education (CE), reflected in "paragraphs B, C, D" according to paragraph numbering that existed in the rule. As time went by, the other paragraph references were deleted, leaving only "category A" today. With the addition of definitions, "category A" will no longer be located in paragraph (A) of the rule. A proposal to eliminate continued reference to "category A" was reviewed. If this reference were discontinued, references to "category A" used on license-related forms and would need to be changed. The Advisory Group recommended that the references be kept, advising that it took many years to educate licensees on what "category A" means, and that the reference should continue to avoid creating confusion.

In new paragraph (G)(2), the Advisory Group recommended changing wording in the current definition of "continuing education" (new paragraph G) to read "health care career goals" instead of "professional career goals" to prevent credit being awarded to someone taking a course non-related to their licensure, i.e., in pursuit of a career change or other field of study. The Advisory Group reworded "Independent study" to "Independent study continuing education activity" and added "for which contact hours may be awarded."

In new paragraph (G)(3), the Advisory Group recommended replacing the term "interdisciplinary" with "interprofessional."

Rule 4723-14-03:

The Advisory Group recommended that paragraph (E) be revised so that for reinstatement or reactivation, a nurse who is inactive or lapsed less than two years, or who holds a current, valid license in another jurisdiction, would not be required to obtain the more detailed CE content. If the nurse does not hold a current, valid license in another state, and is lapsed/inactive for two

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years or more, then the detailed course content provided in (E)(2) (a) through (e) is required.

Rule 4723-14-04:

In paragraph (C), the Advisory Group recommended changing “approving entity” to “educational provider.” Since “provider” is a defined term, the language was changed to “provider” rather than “educational provider.”

Rule 4723-14-05:

The Advisory Group recommended, in paragraph (A)(6), the new term “interprofessional” instead of “interdisciplinary”.

Rule 4723-14-07:

The Advisory Group recommended adding paragraph (E) to prevent a licensee/certificate holder from invoking the one-time “waiver” after receiving an audit notice.

Rule 4723-14-08:

The Advisory Group recommended adding the phrase “headquartered in the state of Ohio” to paragraph (A).

Rule 4723-14-09:

The Advisory Group recommended deleting current (A)(1)(b) regarding “philosophy of the proposed OBN approver”; and adding, in new (A)(1)(h) a requirement that the registered nurse directing peer review hold a current, valid license in Ohio.

Rule 4723-14-12:

Changes recommended by the Advisory Group included replacing the word “policies” with “processes”; adding “responsibilities” to (A)(2); adding new (A)(4); and deleting old (A)(18) and (B). Other changes are to refer to “approved provider unit” consistent with a new definition proposed by the Advisory Group.

Rule 4723-14-14:

Changes recommended by the Advisory Group and to simplify language.

Rule 4723-14-15:

Changes recommended by the Advisory Group including changing “advertising” to “marketing”; adding a new (A)(8) related to disclosure of commercial support or sponsorship support; and adding new language in (B)(1) and (2) related to marketing materials and disclosure.

Rule 4723-14-16:

Changes recommended by the Advisory Group and to simplify language.

Rule 4723-14-17:

Changes recommended by the Advisory Group and to simplify language.

Rule 4723-14-18:

Changes recommended by the Advisory Group. In addition, language in (A)(4) and (B) addresses transfer of records of the OBN approver to a custodian in both a planned and unanticipated termination situation.

Chapter 4723-27 Medication Aides

Rule 4723-27-08

The company the Board contracts with for the written and skills exam requested that the written exam be electronic, necessitating a rewording of this rule.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Through the Advisory Group, the Board relied on the expertise of continuing education approvers, continuing education providers, and licensees. In addition, representatives provided current standards of continuing education from the American Nurses Credentialing Center that served as the basis for revisions in Chapter 4723-14. The remainder of the rules package pertains to internal organization, operations, and technical changes.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The following provision was considered:

Rule 4723-14-05:

The Advisory Group recommended re-referencing "Category A" in this rule, however, since this term is defined in Rule 4723-14-01, it would be redundant to again define the term here, so that change was not made.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The outcomes for the continuing education regulations, Chapter 4723-14, OAC, are that licensees obtain continuing education credits to demonstrate continued competency for safe nursing practice and that the approvers and providers ensure the continuing education is pertinent content for nursing practice. The Board does not believe performance based rules are applicable to the rules that establish internal management, nor do those rules affect small businesses.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The five-year rule review process is conducted with a focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, meetings with interested

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parties and the Advisory Group on Continuing Education helped ensure that these rules do not duplicate any existing Ohio regulation.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Meetings with interested parties and the Advisory Group on Continuing Education will help ensure that these rules are applied consistently and predictably for the regulated community because leaders in this community will meet periodically during the implementation period of the rules and beyond. The Board plans to monitor the progress with respect to the rules and report back to these groups. In addition, the Board will continue to use its website, newsletter, and social media to update affected licensees, continuing education providers, other stakeholders, and the public in general.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Chapter 4723-14, OAC, impacts licensees, their employers, and continuing education approvers and providers.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Not obtaining continuing education as specified in Chapter 4723-14, OAC, could result in an advisory letter, disciplinary action, or a delay in licensure renewal. If licensees do not maintain the requirements of licensure and cannot work, their employers may need to cover work shifts/schedules with other nurses. If approvers or providers of continuing education do not comply, they would correct their review process and/or content of courses.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Continuing education for licensees is widely available in various formats that provide for reasonable availability and costs. In addition, most employers provide continuing education at no cost to the licensee and the institutions absorb these costs as part of the operational costs of their existing education departments and personnel. It is expected that the requirements will

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create competition among providers of continuing education and this will mediate costs. Because licensees are already required to obtain continuing education for each two-year renewal period, the adverse impact is not expected to be quantifiable.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Continuing education is one way to ensure licensees maintain on-going competency and provide safe nursing care. The Board worked with representatives of the continuing education community extensively in the process of reviewing these rules and it was determined by the Board and the Advisory Group that the regulatory intent of establishing a consistent set of requirements for continuing education approval and completion of course work was achieved with minimal to no adverse impact.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Yes. Chapter 4723-14, OAC, authorizes the Board to grant a waiver of the continuing education requirements. “Waiver” means a one-time exception from meeting the continuing education requirement set forth in Section 4723.24 of the Revised Code and rules 4723-14-03, 4723-23-06, and 4723-26-05 of the Administrative Code.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The rules do not impose fines or penalties. Waivers of fines and penalties for paperwork violations and first time offenders may be considered consistent with ORC section 119.14 and ORC 4723.061 which does not require the Board to act on minor violations of the Nurse Practice Act or the rules adopted under it, if the violations are committed by applicants or individuals licensed under Chapter 4723 of the Revised Code and the Board determines that the public is adequately protected by issuing a notice or warning to the alleged offender.

18. What resources are available to assist small businesses with compliance of the regulation?

The Board employs staff dedicated to assist the public and small businesses by responding to any questions or concerns about the implementation of the rules. The Board’s Advisory Group, composed of continuing education approvers, providers, and licensees also may respond to questions from small businesses. The Board continues to use its website, newsletter and social media to regularly update the public and licensees, including small businesses, to changes in requirements and to provide frequently asked questions.

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